

**Rocky Flats Citizens Advisory Board
Meeting Minutes
April 7, 2005
6 to 9 p.m.
College Hill Library, Room L-211
Front Range Community College, Westminster, Colorado**

Board Chair Jerry DePoorter called the meeting to order at 6:00 p.m.

BOARD / EX-OFFICIO MEMBERS PRESENT: Suzanne Allen, Jerry DePoorter, Joe Downey, Earl Gunia, Erin Hamby, Victor Holm, Bill Kossack, Mary Mattson, Mike Maus, Bill McNeill, Hank Stovall, Phil Tomlinson / John Rampe (DOE-RFPO), Steve Gunderson (CDPHE), Dean Rundle (USFWS), Mark Aguilar (EPA), Scott Surovchak (DOE-LM)

BOARD / EX-OFFICIO MEMBERS ABSENT: Andrew Ross / none

PUBLIC / OBSERVERS PRESENT: Ralph Stephens (Denver), James Horan (Denver), Ted Auker (Denver), David Abelson (RFCLoG), Abigail Marinack (Denver), Deborah Trout (Denver), Rob Henneke (EPA), Glenn Fischer (GAO), Pam Tumler (GAO), John Tillet (DOE-Office of Inspector General), Joan Seaman (Littleton), Laura Brooks (Kaiser-Hill) / Ken Korkia (RFCAB staff), Patricia Rice (RFCAB staff)

PUBLIC COMMENT / NEW BUSINESS:

Pam Tumler: Pam introduced herself and Glenn Fischer. Both are with the Government Accountability Office (GAO). GAO is conducting a review of the Rocky Flats cleanup at the request of Senator Allard and Senator Sessions, who is the chair of the Strategic Forces Subcommittee of the Senate Armed Services Committee. The question they are particularly interested in is whether the site will be closed on time and at the cost projection made by DOE. This will be a follow-up report to one GAO released in February 2002. Another question they will be looking at is whether the site will be cleaned up to standards that allow transfer to the U.S. Fish and Wildlife Service. They also will be looking at lessons learned from the cleanup that would be useful in other ongoing cleanup projects. They hope to have a report ready by the end of the summer.

David Abelson: David wanted to update the Board on the results of the discussion by the Rocky Flats Coalition of Local Governments on the formation of a Local Stakeholder Organization (LSO) for Rocky Flats. He stated there were two issues the Coalition board was grappling with during its discussion. One was what was legally permissible and the second was what the board was willing to advocate as a matter of public policy. David said there was debate on the legal issue of whether the LSO legislation would allow for full and equal participation by all LSO members as is advocated by the Citizens Advisory Board, or whether the language as written would preclude non-elected persons from having full membership. David also said there was an important public policy issue for the Coalition in that the members feel that elected officials represent a rather large constituency, whereas individuals from the community or those representing interest groups represent only a small constituency. David next stated his position that it does not make sense to start the LSO until physical completion of the site's cleanup. Up until that time there will still be a functioning Coalition and Citizens Advisory Board. Imposing a third organization before that time would create a murky situation. The Coalition will advocate that DOE not stand up the LSO until after physical completion. The Coalition also believes that LSO membership should be periodically revisited. David suggests that such a review on the make-up and membership on the LSO take place just before regulatory closure. Coalition representatives will be traveling to Washington, D.C. in the coming week to meet with DOE, Senator Allard, and Congressmen Udall and Beauprez to discuss the LSO. The Coalition plans to approve a recommendation on the LSO at its May meeting. In the meantime, the Coalition will continue to discuss issues such as if non-elected persons are involved, who they are and how they will be selected. The Coalition still needs to decide its own future and the timing for its shutdown.

John Rampe: John provided an update on the recent water quality exceedance at GS-10, which is a point of evaluation for water quality along South Walnut Creek, upstream of the B-ponds. A water quality exceedance for plutonium and americium was first noted in early February and current data indicate that the exceedance continues. The levels have varied for plutonium ranging from 0.17 to about 0.6 picocuries per liter. For americium the levels have ranged from 0.17 to 1.0 picocuries per liter. The water quality standard for both plutonium and americium is 0.15 picocuries per liter. In contrast to the recent americium exceedance in the North Walnut Creek

drainage, the exceedance in South Walnut Creek is a mixture of plutonium and americium, with the ratio typical of what is normally expected. The site believes the exceedance is erosion related. Kaiser-Hill is investigating the subdrainages to South Walnut Creek. The plutonium seems to be coming largely from the area of Building 707 and the 750 Pad in the central part of the former Industrial Area. The americium appears to be coming from other areas in the GS-10 drainage, mainly in the area where rechanneling of South Walnut Creek is happening. They will continue investigation to further pinpoint the exact areas or activities causing the exceedances. In the meantime, discharges from Pond B-5 on South Walnut Creek have been curtailed. The site will send a formal notice and explanation on this matter to the state as required by the Rocky Flats Cleanup Agreement. They will copy the CAB. A question was raised whether the exceedance is getting better or worse. John stated they believe they are in the middle of the worst because of the amount of exposed soil right now which is more than they have ever had and is more than they will have in the future. They are working on erosion controls. Another question was raised as to whether this exceedance is part of a yearly trend. John said that exceedances at GS-10 have occurred over the past several years. He will follow-up by providing data to see if there is a seasonal component to these exceedances. Another question arose whether the community should be concerned about future exceedances at Indiana Street. John believes the answer is no because the ponds will remain in place and he doesn't expect any more unusual occurrences such as happened with the recent Ponds A-3 and A-4 americium exceedances to occur. A point was raised that the community needs to carefully examine the future monitoring needs at the site, and who will have responsibility for the monitoring, because of a concern that exceedances such as this may continue to happen after site closure.

Ken Korkia: Ken introduced John Tillet who is with the Office of Inspector General for DOE. The Inspector General's office is doing a review of the Rocky Flats cleanup similar to that being done by the Government Accountability Office. Ken also announced that CAB would be moving its offices the first part of May. The Board will relocate to DOE's Mountain View office building in Broomfield. DOE will be providing office furniture from its inventory, so the Board will need to find a new home for its furniture. Ken asked members to let him know of groups or entities to which the Board can donate its furnishings.

Jerry DePoorter: Jerry presented a framed photograph of Rocky Flats to Victor Holm who is leaving the Board after having been a member since 1996. Jerry thanked Victor for his service to the Board. Victor expressed his appreciation for the time he has spent with the Board and noted the great success that has been made to clean up Rocky Flats. John Rampe, on behalf of Rocky Flats, also thanked Victor for his participation and presented him with a hardhat signed by numerous DOE and Kaiser-Hill officials. Ken Korkia thanked Victor for his support to the Board and particularly to the staff. He noted that Victor had served two terms in each of the offices of Treasurer, Vice-Chair and finally Chair of the Board.

PRESENTATION ON THE REMEDIAL INVESTIGATION / FEASIBILITY STUDY (RI/FS):

Laura Brooks of Kaiser-Hill gave a presentation on the Remedial Investigation/Feasibility Study (RI/FS). The purpose of the RI is to collect enough data to characterize the site to develop and evaluate effective cleanup alternatives and investigate the nature and extent of contamination after cleanup. It includes the Comprehensive Risk Assessment (CRA), which analyzes the risks to humans and ecological receptors, including animals.

Laura said the purpose of the FS is to ensure appropriate cleanup alternatives are developed and evaluated, to develop remedial action objectives, and to analyze alternatives to meet the objectives. The development of the RI/FS follows a work plan approved in March 2002.

Laura said the RI/FS will include the following elements and chapters: an executive summary, an introduction consisting of the purpose and background, the physical characteristics of the study area, nature and extent of contamination, contaminant fate and transport, comprehensive risk assessment, remedial action objectives, a detailed analysis of alternatives, a summary and appendices.

A web site has been set up to inform stakeholders of the RI/FS process and to allow them to view drafts of sections of the RI/FS and the work plan tasks. The web site, created this week, is www.rfets.gov/doe/ctsm/index.htm, and sections of the RI/FS have been uploaded for viewing. Most of the work plan tasks have to do with developing technical memoranda or summary reports. Technical memoranda will include the applicable, relevant and appropriate requirements (ARARs), the remedial action objectives (RAOs), and alternatives. Summary reports will contain such things as the condition of the site, background, and physical nature.

Laura showed the path forward as a list of fifteen tasks that culminate in the draft RI/FS report, which is projected to be out by September of this year.

Laura next gave an overview of the Comprehensive Risk Assessment (CRA). The CRA will analyze the risk of residual contamination to humans and ecological receptors. Receptors include the wildlife refuge worker and wildlife refuge visitor, Preble's meadow Jumping Mouse, black-tailed prairie dog, mule deer, American kestrel, fish, invertebrates, and amphibians.

To examine the risks from residual contamination, the site was sectioned into 12 exposure units (EUs). The EUs were established based on the function and anticipated activity patterns, ecological habitats, and contaminant release patterns.

A data adequacy assessment has been performed site-wide to determine if the contaminant data that has been collected is adequate to analyze the associated risks. Surface soil, sediment, and subsurface soil data will be gathered for each EU after completion of any accelerated actions in the EU. A data quality assessment will be performed for each EU, exposures will be estimated, and then the health risks and hazards will be characterized.

In answer to a question, John Rampe said Kaiser-Hill's contract calls for the company to complete the draft RI/FS, as well as complete the information on alternatives. He said it was DOE's job to write the final RI/FS report, the Proposed Plan, and the CAD/ROC. He said DOE is pushing for late summer or early fall in 2006 to get the Record of Decision signed.

An audience member said that the RI/FS is usually written before cleanup begins, not after. She asked why the RI/FS for Rocky Flats was coming at the end. Laura said there were some units on the site for which the RI/FS has been completed and the Corrective Action Decision/Record of Decision (CAD/ROD) signed. She said the history of the site is that Rocky Flats was declared a Superfund site and put on the National Priorities List in 1989. Some studies were undertaken, but by 1996, not too much had been done. In 1996 the Rocky Flats Cleanup Agreement (RFCA) was negotiated between the DOE, Colorado Department of Public Health and Environment (CDPHE), and the U.S. Environmental Protection Agency (EPA), which set forth a prescription for cleanup. By 1996, they knew where all the highest risk areas were and set out to clean those areas through what is known as "accelerated actions." RFCA requires that after the accelerated action is complete, the regular process for CERCLA (Comprehensive Environmental Responsibility, Compensation and Liability Act) take over.

A concern was expressed that the documents would be written in language not understandable to an ordinary person. However, John Rampe said they have tried to write the documents in a clear and cogent manner.

Steve Gunderson of CDPHE said all the RFCA parties are attempting to reach accord on the post-closure Rocky Flats Stewardship Agreement. He said the biggest news is that the DOE has reversed its stand on the state Covenants Law. He said that was the biggest impediment to reaching agreement. The state law would apply restrictions to land where hazardous materials are left behind and which does not meet the criteria for unrestricted use. In order to be classified for unrestricted use, residual contamination could present an excess lifetime cancer risk of no more than 1 in a million. DOE had taken the stance that, as a representative of the federal government, it should not be subject to state law.

Steve also said the parties are working to finalize the Integrated Monitoring Plan for the site.

DISCUSSION ON FORMATION OF THE LOCAL STAKEHOLDER ORGANIZATION:

Jerry DePoorter began the discussion by reviewing the recent meeting of the Rocky Flats Coalition of Local Governments where formation of the Local Stakeholder Organization was discussed. Jerry reported that most of the Coalition members support creation of an LSO where members of the general community would not have equal membership with representatives from local governments. This position is in contrast with CAB, which supports full and equal participation for all LSO members. Jerry stated he had a conversation with Doug Young with Congressman Udall's office. Doug advised the Board to send a letter to Mike Owen with the Office of Legacy Management endorsing a proposal that members of the LSO have equal participation, but that the number of local government representatives would be greater by one than the number of non-elected persons. Such an arrangement would preserve for the local governments the opportunity to vote in a majority block if that was important for them. Jerry also suggested that the Board consider writing a letter to each of the local Congressional

representatives asking them to clarify once and for all their interpretation of the LSO legislation and whether their intention was to exclude non-elected persons from full and equal participation. He noted that Doug Young stated during the Coalition's meeting that he did not interpret the LSO legislation as being restrictive in terms of non-elected person's participation.

Scott Surovchak with the Office of Legacy Management (LM) stated that his organization's interpretation of the LSO legislation tracks with what Doug Young advocated; namely, that LSO membership not be restricted.

A question was raised as to who ultimately will decide the LSO membership. Scott Surovchak said that LM will have this responsibility. LM wants the community, however, to determine the makeup of the LSO and forward a recommendation to DOE. LM is likely to support that recommendation. Scott stated that LM's discussions with congressional staff have led to the conclusion that there is room in the legislation to form an LSO that makes everyone happy. LM is hesitant to make a unilateral decision about the LSO membership because it believes this decision is best made by the community.

Discussion next focused on the decisions that the LSO would ultimately be making. Scott suggested that most of the decisions made directly by the LSO would be about how the group spends its money. Opinions were expressed that it would be important for all stakeholders to have a say in matters related to management of the Rocky Flats site and that is why the CAB must continue its argument for full and equal participation. A point was raised that the LSO legislation does not state that the LSO would provide advice and recommendations to DOE. That is why DOE has said that the Federal Advisory Committee Act (FACA) does not likely apply to the LSO. If this is the case, then the LSO may not be allowed to provide advice and recommendations on policy decisions related to the site's management. If the LSO was allowed to provide such advice, then FACA would be necessary. FACA would also require that the LSO membership be balanced and diversified.

A member raised a concern that the LSO legislation is flawed because it does not state which elected officials are to be included. There are many types of elected officials besides members of city councils. It was suggested that the Board needs to work toward changing the legislation so that it is clearer on exactly what is intended for LSO membership.

Another member stated the concern that the LSO legislation is intended for two other locations besides Rocky Flats, specifically the Fernald and Mound sites in Ohio. Both of these sites are unique and the roles of the community stakeholders have historically been different. A suggestion was made that discussions need to occur with these sites to see how they are interpreting the LSO legislation.

In concluding this discussion, the Board asked staff to draft two letters. One would be to Mike Owen with the Office of Legacy Management expressing the Board's support of the proposal that membership on the LSO include one more elected official than the number of non-elected persons, but that all members would have full and equal participation. A second letter would be sent jointly to Senators Allard and Salazar and Congressmen Udall and Beauprez asking them to clarify their interpretation of the LSO legislation on the question of membership. The draft letters will be reviewed via email and sent as soon as possible.

PRESENTATION AND DISCUSSION ON THE MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF ENERGY AND INTERIOR FOR THE ROCKY FLATS NATIONAL WILDLIFE REFUGE:

John Rampe gave a presentation on the draft Memorandum of Understanding that was negotiated between the U.S. Departments of Energy and Interior.

John said the MOU was mandated by the federal legislation creating the Rocky Flats National Wildlife Refuge. The act provided for the U.S. government to continue to own the land on which Rocky Flats is located. The legislation calls for the transfer of most of the land to the Department of Interior (DOI) and for DOE to have jurisdiction over land where there is residual contamination. The act requires a certification by the EPA that cleanup and closure has been completed and all response actions are operating successfully prior to the transfer of jurisdiction to the DOI.

John said a draft MOU was to have been published within a year of the Act – by Dec. 28, 2002; however mineral rights became a sticking point for both agencies. DOI did not want to take any land into the refuge that might be subject to strip mining. DOE does not want the responsibility of managing the lands.

The MOU itself should: delineate the responsibilities between DOE and DOI necessary to carry out the transfer; address the impact of property rights on refuge management; identify the land to be transferred; and specify allocation of costs incurred at the refuge relating to future response actions.

The final MOU was to identify lands to be transferred with a legal description. However, it is difficult to tell precisely what land should be transferred when cleanup is not complete and the final layout of residual contamination is unknown. The MOU will be modified in the future when the boundaries of the land to be transferred can be determined.

The MOU discusses DOE's and DOI's responsibilities. DOE is responsible for response actions relating to release of contaminants. DOI is responsible for managing the refuge, helping DOE with natural resource management, and preparing a Level III contaminant survey and Comprehensive Conservation Plan, recording land use controls, and providing access to DOE. DOE funds DOI's cost for the transition.

The MOU does not settle which agency will manage land on which there are permitted or permittable sand and gravel mineral rights. The final MOU will need to resolve the issue.

Comments on the draft MOU will be accepted by DOE through May 22, 2005. The parties to RFCA will propose the land to be retained by DOE through the processes for the RI/FS and the post-closure agreement.

USFWS will prepare a Level III contaminant survey. Dean Rundle said the Level III contaminant survey is the highest level survey done by the FWS. He said the sampling and analysis plan for the Level III survey has been drafted.

In answer to a question, Dean said about 400 to 500 acres are permitted for surface mining. He said not all of the permittable land can be mined because of conservation easements. John said about 80 percent of the 6,400 acres of the site are covered by privately held mineral rights. However, 2,500 acres of the site were subordinated – meaning the mineral rights cannot be developed – when the original property purchases were made for the site. Those holding the mineral rights at that time were compensated. Other mineral rights holdings are for oil and gas. While Dean said they do not expect those to be developed, it would not be a problem for the refuge if they were.

Dean said that unfortunately the rare xeric tallgrass prairie grows best in the sand and gravel deposits.

A Board Member asked whether the cleanup has been affected by the lack of an MOU, but John said it had not.

John said DOE would ask EPA to provide certification at about the same time as the CAD/ROD is signed. Dean said certification is not a CERCLA term but is something that Congress created.

John said they are going to ask for delisting of a portion of the site – the land to be transferred to the refuge and the surface soil on DOE land.

DISCUSSION OF THE UPCOMING EM SSAB CHAIRS MEETING:

The Environmental Management Site Specific Advisory Board (EM SSAB) chairs will meet in Augusta, Georgia at the end of April. As is customary, a round robin discussion is held at the beginning of the meeting where each SSAB lists its top three issues of concern.

The Board members were asked to discuss their issues of concern so that they in order to summarize them for the Chairs meeting. The items listed included:

- Future public participation and the creation of a Local Stakeholder Organization (LSO) for Rocky Flats: the Board is concerned that the future role of citizen stakeholders may be limited or non-existent in the future LSO for Rocky Flats. The legislation creating the LSOs may present the same difficulties for other SSABs.
- Decreased cleanup funding at other DOE sites: When Rocky Flats and other sites were named as Accelerated Closure Sites, cleanup funding from other DOE sites was diverted. This diversion was to be temporary until the Accelerated Closure Sites were complete. The other sites are now learning that

cleanup funding will not be restored to pre-accelerated closure funding levels. The Board believes DOE must keep its promises to these other sites.

Sharing lessons learned: When Rocky Flats is closed and the Board ceases operations, the members are concerned there will no longer be a venue for sharing lessons learned about cleanup and stewardship activities like currently exists with the EM SSAB. Mechanisms need to be investigated to allow stakeholders associated with the former DOE weapons complex sites to remain engaged with one another.

PLANNING FOR UPCOMING MEETINGS:

At the April 21 Committee Night, the Board will discuss the Remedial Investigation / Feasibility Study (RI/FS) and will develop comments on the Memorandum of Understanding (MOU) for the Rocky Flats Wildlife Refuge. At the May Board meeting, the members will approve comments on the MOU and will schedule presentations on additional sections of the RI/FS document that might be available. Time also may be necessary to continue discussion about the formation of the Local Stakeholder Organization.

ADDITIONAL PUBLIC COMMENT:

Joan Seaman: Joan raised concern that she had only recently become aware of the study of Rocky Flats conducted by the Agency for Toxic Substances and Disease Registry and that there had not been a public meeting to discuss the study. She also expressed a concern about how water quality standards are set by the state of Colorado. She doesn't believe Colorado's standards are very stringent. Joan concluded by noting her concern about the dumping of Rocky Flats waste material at the Erie landfill.

NEXT MEETING:

Date: May 5, 2005 6 to 9:00 p.m.
Location: College Hill Library, Room L-107, Front Range Community College
Agenda:

- *Presentation and Discussion on the Remedial Investigation / Feasibility Study (RI/FS)*
- *Approval of Comments on the Memorandum of Understanding for the Rocky Flats National Wildlife Refuge*
- *Other items as necessary*

MEETING ADJOURNED AT 9:00 p.m. *

(* Taped transcript of full meeting is available in the RFCAB office.)

RESPECTFULLY SUBMITTED:

Bill Kossack, Secretary
Rocky Flats Citizens Advisory Board

The Rocky Flats Citizens Advisory Board is a community advisory group that reviews and provides recommendations on cleanup plans for Rocky Flats, a former nuclear weapons plant outside of Denver, Colorado.

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